IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13423 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAM KRISHNA STEELS PVT. LTD. - Petitioner(s)
Versus
STATE BANK OF SAURASHTRA - Respondent(s)

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= **Appearance :**
MR ASHOK L. SHAH FOR MR. UTKARSH B JANI for Petitioner(s) : 1,
MS NALINI S LODHA for Respondent(s) : 1.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 26/07/2007

ORAL JUDGMENT

1 Rule. Learned Advocate for the respondent is directed to waive service. By consent of the learned Advocates appearing

for the respective parties, the petition is taken up for final hearing and disposal today.

2 This petition has been filed praying for following reliefs :

> *"(A) this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or an appropriate writ, order or direction, quashing and setting aside the impugned order dated 9.5.2007 passed by the learned Presiding Officer in appeal No. 42 of 2006 and also further be pleased to quash and set aside the order dated 28.9.2006 passed by the learned Recovery Officer in Recovery Proceeding No. 63 of 2006 initiated by the respondent bank against the petitioner Company.*
>
> *(B) this Hon'ble Court may be pleased to stay the further proceedings in the above matter and direct the respondent bank not to take any further coercive measures under the provisions of the RDDB Act and under the provisions of the Securitisation Act against the petitioner since the petitioner has honoured the said consent terms fully and finally.*
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> *(C) This Hon'ble Court may be pleased to direct the respondent bank to immediately release the original documents and title deeds of the properties of the petitioner and further to issue a "No Due Certificate" in the name of*

the petitioner considering the validity of the consent decree passed with mutual consent on 3.3.2006 between the petitioner and the respondent bank.

(D) pending hearing, admission and final disposal of this petition, this Hon'ble Court may be pleased to stay the further proceedings in the above matter and direct the respondent bank not to take any further coercive measures under the provisions of the RDDB Act and under the provisions of the Securitisation Act against the petitioner since the petitioner has honoured the said consent terms fully and finally.

(E) pending hearing, admission and final disposal of this petition, this Hon'ble Court may further be pleased to direct the respondent bank to immediately release the original documents and title deeds of the properties of the petitioner and to issue a "No Due Certificate" in the name of the petitioner considering the validity of the consent decree passed with mutual consent on 3.3.2006 between the petitioner and the respondent bank.

(F) this Hon'ble Court may be pleased to pass such other and further reliefs as the facts and circumstances of the present case may require.

(G) this Hon'ble Court may be pleased to provide for the cost of this petition from the respondent bank."

3 The petitioner company was a borrower vis-a-vis the respondent bank. As the petitioner company failed to discharge the liability the respondent bank initiated recovery proceedings by filing Original Application No. 107 of 2002 before the Debts Recovery Tribunal under the provisions of Recovery of Debts Due to Banks and Financial Institution Act, 1993 ('the Act') for recovery of sum of Rs.1,73,19,450.68 ps. It appears that the matter was placed before the Lok Adalat held at the Debts Recovery Tribunal, Ahmedabad on 3.3.2006. The parties arrived at a consensus and the consent terms were reduced in writing. Clause No.5 of the said consent terms dated 3.3.2006 reads as under :

"That the defendants hereto agree to pay Rs.67,00,000.00 being full and final settlement as against claim amount of Rs.173.19.45 plus interest as claimed in the Recovery Application in the following manner.

Amount (Rs.)	***Method of Payment.***
Rs.19,00,000.00	*Being up-front amount paid at the time of finalisation of settlement in the Lok Adalat by DD/Cheque No. _____ on or before 31.3.2006.*

Amount (Rs.)	***Method of Payment.***
Rs.34,00,000/- (in two equal monthly instalments on or before 31.5.2006.	*Whereas the balance amount shall be paid in the following manner by post-dated cheques drawn in favour of the applicant bank along with future interest @ ___ p.a. on the balance amount till full and final realisation. Payment beyond 31.5.06 will attract PLR Indent.*
Rs.4,00,000.00	*Paid to the bank.*
Rs.10,00,000.00	*Appropriate the amount lying in No Lien A/c.*
	All the subject litigation shall be withdrawn immediately which includes criminal complaint.
67,00,000.00	*BEING THE TOTAL AMOUNT OF SETTLEMENT.*

If the defendants hereto pay the Balance amount on or before 30.6.2006, the settlement will become automatically cancelled".

4 It is an accepted position between the parties that out of total sum of Rs.67 lacs payable by the petitioner as per aforesaid clause of the consent terms a sum of Rs.63 lacs was paid and received by the respondent bank without demur. In relation to item No.3 of above table, viz. Rs.4 lacs, against the same under the heading "Method of Payment" it is mentioned "Paid to the bank". A dispute arose between the parties with the petitioner stating that this was the same amount paid by the petitioner some time in 2004, while the respondent bank disputing the

same and staking claim to a further sum of Rs. 4 lacs on the basis that consent terms having been entered into on 03.03.2006 any payment prior thereto cannot form part of the total sum of Rs.67 lacs payable by the petitioner under the consent terms.

5 The petitioner therefore challenged the stand of the respondent bank by way of application Exh. D/5 before the Recovery Officer of Debts Recovery Tribunal, Ahmedabad. After hearing the parties the Recovery Officer came to the conclusion that the respondent Bank was justified in claiming a sum of Rs. 4 lacs by disregarding amount paid in 2004. The Recovery Officer therefore directed the petitioner "*to pay the balance amount before releasing the mortgage properties and to issue* '*No Due Certificate*' ". The Recovery Officer thus rejected the application moved by the petitioner.

6 Being aggrieved the petitioner approached the Debts Recovery Tribunal by way of Appeal No. 42 of 2006. Vide judgment dated 09.05.2007 the Presiding Officer held :

> *" xxx xxx xxx The Appellant is questioning the correctness of the order dated 28.09.2006 by the*

Ld. Recovery Officer. By the said order the Ld. Recovery Officer had directed the Appellant to deposit Rs.4.00 lacs before the No Due Certificate would be issued xxx xxx xxx The impugned order passed by the Ld. Recovery Officer is required to be confirmed on different grounds highlighted above. The Appeal being devoid of merits deserves to be dismissed".

7 It is this order which is under challenge in the present petition. According to the petitioner, the orders made by the Recovery Officer and the Tribunal are bad in law as the petitioner has abided by the consent terms and honoured the same completely. That the respondent bank is not entitled to recover any amount and the demand for Rs.4 lacs is not justified considering the consent terms.

8 A suggestion was made on behalf of the petitioner, during course of hearing , that the petitioner is ready and willing to make payment of Rs. 4 lacs plus Rs.65,000/-, without prejudice to the rights and contentions of the petitioner, to put an end to the litigation and buy peace.

9 It is not necessary to enter into any discussion on merits

of the controversy between the parties as the respondent bank has accepted the offer made by the petitioner viz. payment of sum of Rs. 4 lacs and further sum of Rs.65,000/-. This is stated by learned Advocate for respondent, under instructions of Chief Manager (Legal) Shri Vijaykumar.

10 In the circumstances, the petitioner is directed to make payment of sum of Rs.4,65,000/- on or before 15.08.2007. Upon such payment being made the respondent bank shall issue No Objection Certificate and return the original documents which are in possession of the bank after releasing mortgaged properties from the charge.

11 In the result, the petition is allowed in the aforesaid terms and stands disposed of accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt